

**IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

OLLIE GREENE, *et al.*,

Plaintiffs

v.

TOYOTA MOTOR CORPORATION, *et al.*,

Defendants.

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§
§

CAUSE NUMBER: 3:11-cv-0207-N

**APPENDIX IN SUPPORT OF THE TOYOTA DEFENDANTS'
MOTION TO EXCLUDE UNTIMELY DISCLOSED FILE MATERIALS AND DATA OF
PLAINTIFFS' EXPERTS KEITH FRIEDMAN AND RHOADS STEPHENSON**

TO THE HONORABLE COURT:

COME NOW, Defendants Toyota Motor Corporation, Toyota Motor Engineering & Manufacturing North America, Inc., and Toyota Motor Sales, U.S.A., Inc. (collectively “the Toyota Defendants”) and would respectfully show the Court as follows:

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Respectfully submitted,

/s/ Kurt C. Kern

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BOWMAN AND BROOKE LLP

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(972) 616-1701 (fax)

**ATTORNEYS FOR DEFENDANTS
TOYOTA MOTOR CORPORATION,
TOYOTA MOTOR ENGINEERING &
MANUFACTURING NORTH AMERICA,
INC., AND TOYOTA MOTOR SALES,
U.S.A., INC.**

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document has been forwarded to all known counsel of record in this cause in accordance with the Federal Rules of Civil Procedure on this 28th day of February, 2014.

/s/ Jude T. Hickland

**IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

OLLIE GREENE, Individually as the surviving parent of WYNDELL GREENE, SR., WILLIAM GREENE, as the Administrator of the Estate of WYNDELL GREENE, SR., and MARILYN BURDETTE- HARDEMAN, Individually and as the surviving parent of LAKEYSHA GREENE,

Plaintiffs,

V.

**TOYOTA MOTOR CORPORATION,
TOYOTA MOTOR MANUFACTURING
NORTH AMERICA, INC., and
TOYOTA MOTOR SALES USA, INC.,**

Defendants.

CAUSE NUMBER: 3:11-cv-0207-N

JURY TRIAL DEMANDED

PLAINTIFFS' OBJECTIONS AND RESPONSES TO TOYOTA MOTOR CORPORATION'S FIRST REQUEST FOR PRODUCTION TO PLAINTIFFS

Pursuant to Rule 34 of the Federal Rules of Civil Procedure, Plaintiffs serve their Objections and Responses to Defendants' First Request for Production to Plaintiffs as follows.

GENERAL OBJECTIONS

1. Plaintiffs object to each and every one of Defendants' discovery requests to the extent they request information or documents protected from discovery by the attorney-client privilege, the attorney work-product doctrine, or any other applicable privilege or immunity from disclosure. Production of information or documents subject to such privilege, or protection in response to any request is inadvertent and shall not constitute or be deemed to constitute a waiver of such privilege, protection or immunity.

2. Nothing contained in any response herein shall be deemed to be an admission, concession or waiver by Plaintiffs as to the relevance, materiality or admissibility of any document or information provided in response to Defendants' discovery requests.

3. Plaintiffs respond to each of Defendants' discovery requests based on the information available as of the date hereof and will produce documents in its possession, custody or control which are responsive to Defendants' discovery requests and not otherwise protected

REQUEST NO. 52:

The complete file of all testifying experts.

RESPONSE:

Plaintiffs object to this request on the basis that it is vague, overly broad and can be read to seek the production of attorney work product or other protected matter. Plaintiffs also object to this request as a premature request for expert disclosures. Subject to these objections, Plaintiffs will produce, or make available for inspection and/or copying, unobjectionable information required by FRCP 26(a)(2) that is responsive to this Request, in accordance with the Court's Scheduling Order.

REQUEST NO. 53:

The curriculum vitae of all testifying experts.

RESPONSE:

Plaintiffs object to this request on the basis that it is a premature request for expert disclosures. Subject to these objections, Plaintiffs will produce, or make available for inspection and/or copying, unobjectionable information required by FRCP 26(a)(2) that is responsive to this Request, in accordance with the Court's Scheduling Order.

REQUEST NO. 54:

The testifying history list and/or case list for all testifying experts.

RESPONSE:

Plaintiffs object to this request on the basis that it is a premature request for expert disclosures. Subject to these objections, Plaintiffs will produce, or make available for inspection and/or copying, unobjectionable information required by FRCP 26(a)(2) that is responsive to this Request, in accordance with the Court's Scheduling Order.

REQUEST NO. 55:

The complete file of all consulting experts whose opinions or conclusions may be relied upon by a testifying expert.

RESPONSE:

REQUEST NO. 82:

To the extent not otherwise provided in the requests above, all documents identified or referenced by you in your interrogatory answers.

RESPONSE:

Plaintiffs object to this request on the basis that it is vague and/or overly broad, unduly burdensome, harassing and seek information and/or material that are irrelevant and not reasonably calculated to lead to the discovery of admissible evidence.

Respectfully Submitted,

/s/ Aubrey "Nick" Pittman

AUBREY "NICK" PITTMAN

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/s/ Daryl K. Washington

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dWASHINGTON@dwashlawfirm.com

CERTIFICATE OF SERVICE

The undersigned certifies that a copy of this pleading was served upon Defendants' counsel of record on August 19, 2011 in the manner described below:

KURT C. KERN
DAVID P. STONE
CRAIG D. DUPEN

BOWMAN AND BROOKE, LLP
2711 North Haskell Avenue, Suite 650
Dallas, Texas 75204

<input type="checkbox"/>	Via Hand Delivery
<input checked="" type="checkbox"/>	Via CMRRR
<input type="checkbox"/>	Via Telecopy [972 616-1701]
<input type="checkbox"/>	Via Regular U.S. Mail
<input type="checkbox"/>	Via Overnight Courier
<input type="checkbox"/>	Via Email

Daryl K. Washington/ac
DARYL K. WASHINGTON

Melanie McCarty

From: Aubrey Nick Pittman <pittman@thepittmanlawfirm.com>
Sent: Thursday, January 16, 2014 2:57 PM
To: Kurt C. Kern; Daryl Washington
Cc: David Stone; Jude T. Hickland; Brian E. Mason; Kim Weiner; Pat Fitzgerald; John Carlson; Randy Howry; todd.parks@wbclawfirm.com; Ashley De la Cerda; Don Dawson; Kathleen Clark; Scott W. Self; jkenefick@macdonalddevin.com; jhenderson@macdonalddevin.com; Aubrey Nick Pittman
Subject: Re: Greene v. Toyota - Production of Expert File Materials

Mr. Kern:

I am heading back into a meeting with another client and will address your email in more detail later. However, there are a few issues I feel need to be addressed immediately:

First, as you know the vast majority of materials Mr. Friedman relied on are discovery materials that you've had all along. In addition, you never made a formal request that his materials be made available "for inspection and copying." I will address the issue of the logistics of producing expert materials in more detail later including ascertaining whether all Defendants' experts provided "all" of their underlying materials on December 20, 2013.

Second, contrary to your representation, when Mr. Friedman brought the 15 boxes to his deposition you did not ask him what was specifically in each of the boxes and he certainly did not prevent you from looking at the documents. He asked for just a moment to organize them and you asked him to do so over the lunch break, during which time you could have completed a full review. In addition, you did not arrange to have copied the documents he brought for inspection.

Third, as Mr. Friedman and I both explained to you yesterday, the "additional work" to which you are referring was done in preparation for a potential rebuttal report for which he did not have time to complete. He did not change the opinions in his initial report.

I hope this clears these issues.

-----Original Message-----

From: "Kurt C. Kern" <Kurt.Kern@bowmanandbrooke.com>
Date: Thu, 16 Jan 2014 19:37:40
To: Aubrey \"Nick\" Pittman<pittman@thepittmanlawfirm.com>;
Dwashington<dwashington@dwashlawfirm.com>
Cc: David Stone<David.Stone@bowmanandbrooke.com>; Jude T. Hickland<Jude.Hickland@bowmanandbrooke.com>; Brian E. Mason<Brian.Mason@bowmanandbrooke.com>; Kim Weiner<Kim.Weiner@bowmanandbrooke.com>; Pat Fitzgerald<pfitzgerald@howrybreen.com>; John Carlson<jcarlson@howrybreen.com>; Randy Howry<rhowry@howrybreen.com>; todd.parks@wbclawfirm.com<todd.parks@wbclawfirm.com>; Ashley.delaCerde@wbclawfirm.com<Ashley.delaCerde@wbclawfirm.com>; Don Dawson<ddawson@dawson-clark.com>; Kathleen Clark<kathleen@dawson-clark.com>; Scott W. Self<sself@feesmith.com>; jkenefick@macdonalddevin.com<jkenefick@macdonalddevin.com>; jhenderson@macdonalddevin.com<jhenderson@macdonalddevin.com>
Subject: Greene v. Toyota - Production of Expert File Materials

Counsel:

Per our discussions of yesterday it remains our position that expert file materials (particularly those that provide support for their opinions) were required to be served at the time of the expert's report. Further, I pointed out Plaintiffs' deficiency in this regard and requested production of materials relied upon by your expert well over a month ago. As confirmed with Mr. Friedman yesterday he did not produce his file materials in this matter until the middle of the morning session of his deposition and even then did not allow us to review the materials. Moreover, we learned for the first time yesterday that Mr. Friedman has conducted a significant amount of work since production of his report and absolutely no disclosure of same was provided to Defendants. Accordingly, Toyota will be moving to strike and/or preclude the use of such untimely, non-produced and/or non-disclosed materials. As for production of Toyota's expert materials, they were served the same day expert reports were served, you received multiple correspondence on the day of service advising you of same and we have confirmed Plaintiffs' counsel have actually received same.

Kurt

Sent from my wireless device
Please excuse brevity, typos, etc.

Note: This electronic mail is intended to be received and read only by certain individuals. It may contain information that is attorney-client privileged or

protected from disclosure by law. If it has been misdirected, or if you suspect you have received this in error, please notify me by replying and then

delete both the message and reply. Thank you.

Bowman and Brooke LLP

Attorneys at Law

2501 North Harwood Street, Suite 1700
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Kurt C. Kern
Direct: 972.616.1711
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December 9, 2013

VIA EMAIL

Mr. Aubrey "Nick" Pittman
The Pittman Law Firm, P.C.
100 Crescent Court, Suite 700
Dallas, TX 75201

Re: *Ollie Greene, et al. v. Toyota Motor Corporation, et al.*, In the United States District Court
for the Northern District of Texas, Dallas Division; Cause No. 3:11-CV-0207-N

Dear Nick:

We have had an opportunity to further review Plaintiffs' expert disclosures and reports of November 20, 2013. It is apparent that certain materials should have been, but were not produced as part of those disclosures. The Toyota Defendants therefore request that Plaintiffs produce all materials referenced in the expert reports and relied upon by Plaintiffs' experts in forming their opinions, including the Biokinetics, "2010 Toyota 4Runner Fuel Tank Evaluations" report cited by Keith Friedman and Rhoads Stephenson. Without waiving any objection to Plaintiffs' non-disclosure, we ask that Plaintiffs produce all such materials by 5:00 p.m., December 13, 2013.

Sincerely,

BOWMAN AND BROOKE LLP



Kurt C. Kern

KCK/

cc: Daryl K. Washington - Via email at dWASHINGTON@dwashlawfirm.com
Randy Howry - Via email at rhowry@howrybreen.com
Pat Fitzgerald - Via email at pfitzgerald@howrybreen.com
John Carlson - Via email at jcarlson@howrybreen.com
S. Todd Parks - Via email at todd.parks@wbclawfirm.com
Ashley De La Cerda - Via email at Ashley.delaCerde@wbclawfirm.com
Donald H. Dawson, Jr. - Via email at ddawson@dawson-clark.com
Kathleen A. Clark - Via kclark@dawson-clark.com
Michael P. Sharp - Via email at msharp@feesmith.com
Scott W. Self - Via email at sself@feesmith.com
John S. Kenefick - Via email at jkenefick@macdonalddevin.com
Joseph F. Henderson - Via email at jhenderson@macdonalddevin.com

Melanie McCarty

From: Kathleen Clark <kathleen@dawson-clark.com>
Sent: Friday, November 22, 2013 7:47 AM
To: Aubrey "Nick" Pittman; NLWF-Robin L. Hart
Cc: dwashington@dwashlawfirm.com; rhowry@howrybreen.com; pfitzgerald@howrybreen.com; jcarlson@howrybreen.com; Todd.Parks@wbclawfirm.com; Ashley.delaCerde@wbclawfirm.com; Don Dawson; msharp@feesmith.com; sself@feesmith.com; jkenefick@macdonalddevin.com; 'Joseph F. Henderson'; Brian E. Mason; David Stone; Donna M. Struke; Jude T. Hickland; Mary Lindsey; Julia A Campbell; Kim Weiner; Kurt C. Kern; Jama S. Reynolds
Subject: RE: November 21, 2013 correspondence regarding expert deposition schedule

Mr. Pittman:

The proposed schedule is clearly unworkable (as well as being devoid of dates for experts by name). Strick made a formal demand, according to the terms of this Court's amended scheduling order, for dates for depositions of your experts. As a courtesy, we extended the time to five days after your disclosure date. Your letter is not responsive to Strick's demand. Please provide a date for each Plaintiff expert by name, including the location. After we get these dates, we will be in a position to provide dates for Strick's experts.

We have no objection to Dallas as the location for Plaintiff's experts. However, Strick's liability experts are located in Detroit, and, accordingly, that will be the expected location for their depositions.

(Please note: this response and inquiry is without prejudice to Strick's objections to the inadequacy of Plaintiff's Rule 26 expert disclosures and any relief which may be sought in this regard).

Kathleen

Kathleen A. Clark
Dawson & Clark, P.C.
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Detroit, MI 48225
313-256-8900; Fax 313-256-8913
kclark@dawson-clark.com

From: Aubrey "Nick" Pittman [<mailto:pittman@thepittmanlawfirm.com>]
Sent: Thursday, November 21, 2013 4:47 PM
To: 'Robin L. Hart'
Cc: dwashington@dwashlawfirm.com; rhowry@howrybreen.com; pfitzgerald@howrybreen.com; jcarlson@howrybreen.com; Todd.Parks@wbclawfirm.com; Ashley.delaCerde@wbclawfirm.com; Don Dawson; Kathleen Clark; msharp@feesmith.com; sself@feesmith.com; jkenefick@macdonalddevin.com; 'Joseph F. Henderson'; 'Brian E. Mason'; 'David Stone'; 'Donna M. Struke'; 'Jude T. Hickland'; 'Julia A Campbell'; 'Kim Weiner'; 'Kurt C. Kern'; 'Jama S. Reynolds'
Subject: November 21, 2013 correspondence regarding expert deposition schedule

Attached please find a copy of correspondence sent by fax to all counsel earlier this afternoon.

Regards,

Aubrey "Nick" Pittman,

THE PITTMAN LAW FIRM, P.C.

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Melanie McCarty

From: Kathleen Clark <kathleen@dawson-clark.com>
Sent: Monday, December 02, 2013 6:32 AM
To: Aubrey "Nick" Pittman; NLWF-Robin L. Hart
Cc: dwashington@dwashlawfirm.com; rhowry@howrybreen.com; pfitzgerald@howrybreen.com; jcarlson@howrybreen.com; todd.parks@wbclawfirm.com; ashley.delacerda@wbclawfirm.com; Don Dawson; msharp@feesmith.com; sself@feesmith.com; jkenefick@macdonalddevin.com; jhenderson@macdonalddevin.com; Brian E. Mason; David Stone; Donna M. Struke; Jama S. Reynolds; Jude T. Hickland; Julia A Campbell; Kelli Spencer; Kim Weiner; Kurt C. Kern
Subject: RE: Greene v Toyota: November 27, 2013, correspondence regarding scheduling expert depositions

Mr. Pittman:

It is unfortunate that Strick's and Toyota's early requests to Plaintiffs to work out a schedule for expert depositions was rebuffed. It is also unfortunate that Plaintiffs have elected to allow an entire month of the limited expert discovery period to pass before the first date provided for deposition of Plaintiffs' experts. It is not clear whether Plaintiffs are now refusing to provide experts on those dates. Given that time is short, we would appreciate it if you would confirm whether Plaintiffs will produce the experts for depositions as noticed by Toyota.

Plaintiffs' proposal to intersperse defense liability expert depositions with Plaintiffs liability expert depositions is not workable. It is not compatible with the remaining expert disclosure schedule and, in addition, Plaintiffs' liability experts have set forth overlapping subject matter and opinions. Strick will produce its expert disclosures in compliance with the scheduling order. Strick has been working on obtaining dates for depositions of its experts. We will notify you as soon as available dates can be confirmed.

This response is without prejudice to Strick's objections to inadequate Rule 26 disclosures by Plaintiffs' liability experts and any relief Strick may seek related thereto.

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kclark@dawson-clark.com

From: Aubrey "Nick" Pittman [<mailto:pittman@thepittmanlawfirm.com>]
Sent: Wednesday, November 27, 2013 2:54 PM
To: 'Robin L. Hart'
Cc: dwashington@dwashlawfirm.com; rhowry@howrybreen.com; pfitzgerald@howrybreen.com; jcarlson@howrybreen.com; todd.parks@wbclawfirm.com; ashley.delacerda@wbclawfirm.com; Don Dawson; Kathleen Clark; msharp@feesmith.com; sself@feesmith.com; jkenefick@macdonalddevin.com; jhenderson@macdonalddevin.com; 'Brian E. Mason'; 'David Stone'; 'Donna M. Struke'; 'Jama S. Reynolds'; 'Jude T. Hickland'; 'Julia A Campbell'; 'Kelli Spencer'; 'Kim Weiner'; 'Kurt C. Kern'
Subject: Greene v Toyota: November 27, 2013, correspondence regarding scheduling expert depositions

Counsel:

Please find attached a copy of correspondence sent by fax today to Kathleen Clark and Kurt Kern regarding scheduling expert depositions in this matter.

Regards,

Aubrey "Nick" Pittman,
THE PITTMAN LAW FIRM, P.C.
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This message and any attachments to it may contain PRIVILEGED AND CONFIDENTIAL ATTORNEY CLIENT INFORMATION AND/OR ATTORNEY CORE WORK PRODUCT and is intended only for the use of the specific individual(s) to which it is addressed. If you are not an intended recipient of this e-mail, you are hereby notified that any unauthorized use, dissemination or copying of this e-mail or the information contained in it or attached to it is strictly prohibited. If you have received this e-mail in error, please delete it and immediately notify the person named above by reply e-mail. Thank you.

KEITH FRIEDMAN - 1/15/2014

Page 1

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

OLLIE GREENE,
Individually as the
surviving parent of
WYNDELL GREENE, SR.,
WILLIAM GREENE, as the
representative of the
Estate of WYNDELL GREENE,
SR., and MARILYN
BURDETTE-HARDEMAN,
Individually and as the
surviving parent of
LAKEYSHA GREENE,
Plaintiffs,
VS.
TOYOTA MOTOR CORPORATION,
TOYOTA MOTOR
MANUFACTURING NORTH
AMERICA, INC., AND TOYOTA
MOTOR SALES USA, INC.,
VOLVO GROUP NORTH
AMERICA, INC., VOLVO
TRUCKS NORTH AMERICA, A
DIVISION OF VOLVO GROUP
NORTH AMERICA, INC.,
STRICK CORPORATION, INC.,
JOHN FAYARD MOVING &
WAREHOUSE, LLC and
DOLPHIN LINE, INC.
Defendants.

CAUSE NO. 3-11CV-0207-N

ORAL AND VIDEOTAPED DEPOSITION OF
KEITH FRIEDMAN
VOLUME 1

JANUARY 15, 2014

ORAL AND VIDEOTAPED DEPOSITION OF KEITH FRIEDMAN,

Merrill Corporation - Dallas

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www.merrillcorp.com/law

APP 14

KEITH FRIEDMAN - 1/15/2014

Page 2

1 produced as a witness at the instance of the
2 Defendants, and duly sworn, was taken in the
3 above-styled and numbered cause on January 15, 2014,
4 from 9:55 a.m. to 6:03 p.m., before Donna Wright, CSR
5 in and for the State of Texas, reported by machine
6 shorthand, at the law offices of BOWMAN & BROOKE, 2901
7 Via Fortuna Drive, Suite 500, Austin, Texas, pursuant
8 to the Federal Rules of Civil Procedure and the
9 provisions stated on the record or attached hereto.

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KEITH FRIEDMAN - 1/15/2014

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A P P E A R A N C E S

FOR THE PLAINTIFFS:

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- and -

Mr. Daryl K. Washington

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VOLVO TRUCKS NORTH AMERICA, A DIVISION OF VOLVO GROUP
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KEITH FRIEDMAN - 1/15/2014

Page 4

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2 Mr. S. Todd Parks
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5 Decatur, Texas 76234
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7 - and -

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14 FOR THE DEFENDANT FAYARD MOVING & WAREHOUSE, LLC:

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18 Suite 1000
19 Dallas, Texas 75240
20 (972) 934-9100

21 FOR THE DEFENDANT DOLPHIN LINE, INC.:

22 Mr. John S. Kenefick
23 MACDONALD DEVIN, P.C.
24 3800 Renaissance Tower
25 1201 Elm Street
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(214) 744-3300

ALSO PRESENT:

Kristin Geoffrion - Videographer

KEITH FRIEDMAN - 1/15/2014

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KEITH FRIEDMAN

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KEITH FRIEDMAN - 1/15/2014

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KEITH FRIEDMAN - 1/15/2014

Page 23

1 MR. PITTMAN: Objection to form. Also, I
2 would instruct the witness not to respond on the basis
3 of attorney work product.

4 Counsel, this is -- you're aware this is
5 not a formal request. I believe that you've made the
6 point quite clear in a number of pleadings where we
7 tried to request information from you, and you made it
8 known to the court that this is not a formal document
9 request. This is not a formal document request. We
10 have instructed the witness as a result of attorney
11 work product not to respond. If you want to waste your
12 time going through this, you can.

13 So some of the material we'll provide to
14 you, but we're not going to provide material that is --
15 that violates our attorney work product privilege. So
16 if you want to -- if you want to continue this, I'll
17 keep telling the witness not to respond because of our
18 privilege.

19 And, again, this is not a formal document
20 request, and I -- since you represented to the witness
21 that you made this request, I'll represent to the
22 witness that this is not a formal document request that
23 was made of him either pursuant to a deposition notice,
24 nor a subpoena, nor a request for production of
25 documents.

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1 So this informal note from your legal
2 assistant or in conjunction with the information from
3 the legal assistant is not -- is not a formal request.
4 So I don't want you to mislead this witness into
5 believing that he has violated a formal proper document
6 request.

7 So, again, we've objected -- some of the
8 information is in his file, some of the information
9 we'll provide, but -- we'll provide as a courtesy, but
10 this is not a normal request.

11 Q. (BY MR. KERN) Mr. Friedman, are you going to
12 continue to follow Mr. Pittman's instructions and
13 refuse to answer my question?

14 A. Of course.

15 Q. Mr. Friedman, since you're familiar with
16 federal court requirements of experts with regard to
17 information they must produce, let me ask you, are you
18 familiar with the federal rule that provides that there
19 is no work product exception to communications or
20 documents relating to compensation for the expert's
21 study or testimony? Are you aware of that rule, sir?

22 A. No.

23 MR. PITTMAN: Objection, form.

24 Q. (BY MR. KERN) Do you have any personal
25 opposition -- separate from some objection being

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1 file?

2 MR. PITTMAN: Objection, form.

3 THE WITNESS: I don't know what complete
4 means, but it will be a -- it will be the hard -- it
5 will be the file, yes.

6 Q. (BY MR. KERN) Well, I heard you reference
7 that other parts of your file are here with you. Are
8 they here electronically currently?

9 A. No, I have my report.

10 Q. Besides your report, is any other portion of
11 your file with us here at this time?

12 A. No.

13 Q. And is your file maintained electronically or
14 is it all hard copy?

15 A. It's in hard copy.

16 Q. And do you maintain your e-mail communications
17 or analysis regarding this file, sir?

18 MR. PITTMAN: Objection, form.

19 THE WITNESS: No.

20 Q. (BY MR. KERN) I'm sorry?

21 A. No.

22 Q. That's just company policy that e-mails are
23 not maintained or they're maintained for a brief period
24 of time and then discarded in the ordinary course of
25 business?

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1 the record.

2 Q. (BY MR. KERN) All right. Mr. Friedman, we
3 took a break there, and your files have been brought
4 into the deposition room. Are you ready to resume,
5 sir?

6 A. Yes.

7 Q. And is there anything that came to mind during
8 the break in terms of testimony that you've provided so
9 far here today that you in any way need to revise,
10 amend, or correct?

11 A. Well, I was thinking about your question about
12 there's is additions to the report. And I was looking
13 at all the boxes and I was thinking, "Well, yeah,
14 obviously, all the work that we've done couldn't be put
15 into the report." So these sort of highlight the
16 opinions. But, you know, obviously, there's lots more
17 material that you might think of as being add. I
18 wouldn't think that way.

19 Q. All right. Anything else besides that come to
20 mind during the break with respect to testimony you've
21 provided here so far today that you in any way would
22 want to revise, amend, or correct?

23 A. No.

24 Q. As to the issue of additional materials, have
25 you done further work on this case since the time you

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1 Q. All right. Aside from reviewing discovery
2 materials, which would with include all the defense
3 expert reports, and then materials from Strick and
4 Volvo and maybe Toyota, is there any other work you
5 have undertaken since the time your report was produced
6 to us on November 20th of 2013?

7 A. Yes. We've been taking that information and
8 incorporated it into our analyses. So I guess the
9 answer is yes.

10 Q. Okay. Describe what you mean by you took
11 those materials and incorporated them into your
12 analyses.

13 A. Well, we took them into account is what I
14 mean.

15 Q. Okay. All right. Besides reviewing the
16 discovery --

17 A. To the extent that we understood them.

18 Q. All right. Besides the discovery materials
19 being reviewed by you, which would include the defense
20 expert reports and materials from Strick and Volvo and
21 perhaps Toyota and then incorporating them into your
22 analyses, is there any additional work you've
23 undertaken in this case since November 20th, 2013, when
24 your reports were provided to us?

25 A. Well, like I said, we continued to do our

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1 analyses. So we've done some testing work, we've done
2 some analysis work, we've done simulation work, we've
3 done -- you know, as I said, continued our analysis
4 based on the additional information.

5 Q. You've done testing and simulation work since
6 November 20th, sir?

7 A. We continued our simulation and analysis work.

8 Q. All right. Tell me about the testing you did
9 in general since November 20th.

10 A. Well, we've looked at -- we've tested a
11 trailer with air ride suspension and we tested the fuel
12 tank and we analyzed impacts with varying trailer
13 conditions and incorporating various Volvo parts that
14 were supplied.

15 Q. Okay. So the testing you've done since
16 November 20th -- and this is in general, but I just
17 want to make sure I have the list correct. You tested
18 a trailer with air ride suspension, you tested a fuel
19 tank, you analyzed certain trailer conditions, and then
20 you incorporated various components on a Volvo tractor?

21 A. Yes.

22 Q. Any other testing work which you've done since
23 November 20th?

24 A. Well, I think that describes it basically.

25 Q. Okay.

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1 A. I mean, testing, looking at the impact between
2 the Volvo and the 4Runner with the Volvo parts that
3 were finally supplied, at least partially.

4 Q. And then you said testing and simulation. Is
5 there separate simulation work or is that incorporated
6 in this list?

7 A. I guess it depends on how you think of it, but
8 there certainly are simulations. So you can think of
9 it as testing or you can think of it as analysis.

10 Q. Tell me about the simulation work you've done
11 since November 20th in general.

12 A. Well, we've done finite element modeling of
13 various impacts.

14 Q. And you refer to finite element modeling as
15 FEM, sir?

16 A. Or FEA. Actually --

17 Q. Which one would you prefer to use?

18 A. I just say finite element analysis. I don't
19 usually use abbreviations.

20 Q. All right. Well, tell me about the finite
21 element analysis simulation work you've done.

22 A. Well, we've impacted the -- a vehicle
23 representing a 4Runner, we've -- with a vehicle
24 representing the Volvo. We've impacted the 4Runner
25 into a Strick trailer and -- with and without underride

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1 guards under various conditions.

2 Q. Okay. Anything else?

3 A. I think they also looked at -- I think that's
4 the general characteristics.

5 Q. And then what else were you thinking there?
6 You said you also looked at --

7 A. Well, I already said Volvo hitting the
8 4Runner.

9 Q. All right. And when did you conduct this
10 work, sir?

11 A. Well, we've been conducting it. As I said, we
12 got new information, so we incorporated that.

13 Q. Again, if we had your billings detailing the
14 hours that you've worked on the days that you've worked
15 with a description of the work, would you be able to
16 better tell us when this work was conducted?

17 A. No.

18 MR. PITTMAN: Objection, form.

19 Q. (BY MR. KERN) Sir?

20 A. No.

21 Q. Why not?

22 A. Well, because in there it would be in that
23 kind of detail. But, I think, in general, you know, we
24 received materials. And when we receive them, then we
25 incorporate them. So, for example, we had a document

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1 from Toyota, but it wasn't translated, so we had to
2 wait for a translation and got a translation.

3 Q. And you are disclosing to us for the first
4 time today that you conducted this testing and
5 simulation work. Is that correct, sir?

6 MR. PITTMAN: Objection, form.

7 THE WITNESS: I don't know. I think of
8 it more as illustrations. They're not my opinion.
9 They illustrate my opinions.

10 Q. (BY MR. KERN) Well, am I correct that you're
11 disclosing to us for the first time today that you
12 conducted this testing and simulation work?

13 MR. PITTMAN: Objection, form.

14 THE WITNESS: No. It's just sort of the
15 background to my opinions. I mean, something was going
16 on in parallel as opposed to something about
17 disclosing.

18 Q. (BY MR. KERN) Show me where in your report by
19 page number you indicated that you had conducted
20 testing with override suspension or done finite element
21 analysis of a Volvo into a 4Runner.

22 A. Well, in here is a -- this looks like an
23 illustration of an FE frame, as you see on Page 38 and
24 39.

25 Q. I'm not looking for diagrams or pictures. I

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1 want you to point to me in this report where you
2 disclosed that you had done testing on a trailer with
3 override suspension or had done finite element analysis
4 simulations of a Volvo into a 4Runner.

5 MR. PITTMAN: Objection, form.

6 Q. (BY MR. KERN) Are you going to be able to do
7 that, sir? Or, if I understood you correctly, this was
8 all the work that you conducted since November 20th, so
9 by definition it wouldn't be in this report?

10 MR. PITTMAN: Objection, form.

11 THE WITNESS: Well, I think what I said
12 is, you know, this shows an FE model in the report of
13 the frame and the tanks. So the question of, is there
14 some explicit statement about it? I think, as I said,
15 we're still -- we were still waiting for information
16 to -- to have the characterization of the Volvo and
17 et cetera.

18 Q. Have you read --

19 A. It's not an -- by the way, it's not an
20 underride suspension. It's air ride suspension.

21 Q. Have you read Robert Lang's report in this
22 case, sir?

23 A. I skimmed it. It's very long.

24 Q. Why would you have not read it in greater
25 detail?

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1 company?

2 A. He's an employee in some sense, but he's a
3 1099 employee.

4 Q. All right. So, then, tell me all of the
5 evidence, sir, that you have or all the bases for the
6 opinion that you've offered that the fuel tank struck
7 the ground in the initial impact with the Volvo.

8 MR. PITTMAN: Objection, form.

9 THE WITNESS: Well, what we see is -- I
10 guess I could get some materials.

11 Q. (BY MR. KERN) Mr. Friedman, do you remember
12 my question, sir?

13 A. Yeah. I was just looking for some
14 illustrative materials, though, just --

15 Q. Okay. You said that you were looking for
16 illustrative materials in your file, sir. During the
17 break did you have your file brought into the room?

18 A. Yes.

19 Q. And did I request to be able to review the
20 file during the break, and you told me that, no, you
21 would prefer that you leave it in the condition which
22 it was brought into the room so that it would be
23 organized pursuant to your liking?

24 A. Yes.

25 Q. Yet, you just took about five minutes to look

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1 in your file materials and were not able to locate the
2 illustrative materials that you apparently were looking
3 for?

4 A. Well, not instantaneously. But, as I said, I
5 haven't had a chance to go through the boxes to have
6 them organized yet. So -- but I have some -- you know,
7 I think I can answer your question just from the
8 report.

9 Q. Well, with respect to the file materials, sir,
10 were you aware that we had requested that these
11 materials be produced to us before your deposition,
12 sir?

13 A. No.

14 MR. PITTMAN: Objection, form.

15 Q. (BY MR. KERN) That's never been communicated
16 to you that there was a request or that you should
17 produce your file materials in advance of your
18 deposition, sir?

19 MR. PITTMAN: Objection, form.

20 THE WITNESS: Well, I think -- you know,
21 I don't know that that would have been possible in the
22 case even if it was.

23 Q. (BY MR. KERN) Why would that not have been
24 possible, sir?

25 A. Because there's so much material.

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1 Q. (BY MR. KERN) And other than those reports
2 with the attached references/bibliographies and the CVs
3 of yourself and Dr. Stephenson, you have not provided
4 any of your file materials prior to today. Isn't that
5 true, sir?

6 MR. PITTMAN: Objection, form.

7 THE WITNESS: Yes.

8 Q. (BY MR. KERN) All right. So back to my
9 question, which initially was, tell me about all of the
10 evidence that you have that supports your underlying
11 opinion that the fuel tank contacted the ground when
12 the Volvo initially struck the 4Runner, and you were
13 unable to locate anything in your file materials, but
14 now what are you wanting to refer me to, sir?

15 A. Well, I -- so if you look on Page 35 --

16 Q. Yes, sir.

17 A. -- you see the marks in the road.

18 Q. That's the photograph on the left side, sir?

19 A. Yes. And then you see the scratch marks on
20 the tank shield. In addition, you have an analysis
21 that shows the impact of the 4Runner. The 4Runner is
22 driven down by the Volvo tractor and driven into the
23 ground.

24 Q. When was that analysis conducted?

25 A. I'm not sure when it was finished, but at

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1 countermeasure in the event that the fuel tank sustains
2 a severed or pulled hose or line?

3 A. No, but those are examples. Other examples,
4 for example, are to use a bladder and a fuel cell so
5 that you have foam that reduces the flow of fuel out,
6 as an example. There are other technologies is, I
7 guess, what I'm saying.

8 Q. And my question to you is, were bladders or
9 fuel cells discussed at all in your expert report
10 produced to us on November 20th?

11 A. I think we're referring to available
12 technology. So while we didn't list all possible
13 technology, I brought 18 boxes for purposes of
14 including in the -- as exhibits in the deposition to
15 illustrate my opinions. So in there you'll find
16 examples of other technologies. But the point is that
17 it's available technology, so --

18 Q. And those are materials that support your
19 opinions in this case?

20 A. Yes.

21 Q. And I heard you just say you brought 18 boxes.
22 I haven't stopped to count them since they were brought
23 into the room. Is that how many are over there?

24 A. I believe so. Maybe 17.

25 Q. 17?

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1 A. 17, unless there's one hidden.

2 Q. And, again, since we don't know what the cause
3 or the source of the gasoline leak was, it is not
4 possible to say to a reasonable degree of probability
5 that any of this available technology would have
6 changed the outcome in this case. Isn't that true?

7 MR. PITTMAN: Objection.

8 THE WITNESS: No, I think the -- what is
9 appropriate for good fuel system design is appropriate
10 for good fuel system design. So these are elements
11 that should be in any fuel tank system, because you
12 don't want -- you know, the lines can sever. You don't
13 want the tanks to leak. That it was the point of the
14 report in 2004.

15 So, you know, this is work that's
16 published and -- okay, that's -- that's why it was
17 published. So there's no reason for all the tanks --
18 for tanks in general to leak under these conditions
19 that are being tested by Biokinetics. And they show
20 the technology to keep them from being leaking -- from
21 being leaked -- or from -- from leaking. Too much
22 coffee.

23 Q. All right. So, again, I understand that this
24 is a defect which you have identified in terms of the
25 available technology that should have been employed.

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1 He said he did not have time to do a rebuttal report.
2 So the -- the research and information he did following
3 his report was in preparation of a rebuttal report.

4 So it's not that -- that Mr. Friedman had
5 formed additional opinions following the issuance of
6 his report. So, again, if you had listened to his
7 testimony, that -- that work that he was doing was with
8 respect to looking at your experts' reports and the
9 other expert reports and being in a position,
10 hopefully, to render a rebuttal report, which he
11 couldn't do because of time.

12 So I just want the record to reflect that
13 since you want to file your motion. So I'll make sure
14 that I made myself clear with respect to your experts
15 as well.

16 MR. KERN: Okay. The time?

17 THE VIDEOGRAPHER: Four hours and
18 42 minutes.

19 MR. KERN: And the time on the clock?

20 THE VIDEOGRAPHER: It is 4:42.

21 MR. KERN: 4:42?

22 And, counsel, I disagree with what you
23 said. I'll prove to you that -- and I'll prove to the
24 court that I produced all of my expert file materials
25 as required by the federal rules at the time that I

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1 IN THE UNITED STATES DISTRICT COURT
2 NORTHERN DISTRICT OF TEXAS
3 DALLAS DIVISION
4 OLLIE GREENE,)
5 Individually as the)
6 surviving parent of)
7 WYNDELL GREENE, SR.,)
8 WILLIAM GREENE, as the)
9 representative of the)
10 Estate of WYNDELL GREENE,)
11 SR., and MARILYN)
12 BURDETTE-HARDEMAN,)
13 Individually and as the)
14 surviving parent of)
15 LAKEYSHA GREENE,)
16 Plaintiffs,)
17)
18 VS.) CAUSE NO. 3-11CV-0207-N
19)
20 TOYOTA MOTOR CORPORATION,)
21 TOYOTA MOTOR)
22 MANUFACTURING NORTH)
23 AMERICA, INC., AND TOYOTA)
24 MOTOR SALES USA, INC.,)
25 VOLVO GROUP NORTH)
26 AMERICA, INC., VOLVO)
27 TRUCKS NORTH AMERICA, A)
28 DIVISION OF VOLVO GROUP)
29 NORTH AMERICA, INC.,)
30 STRICK CORPORATION, INC.,)
31 JOHN FAYARD MOVING &)
32 WAREHOUSE, LLC and)
33 DOLPHIN LINE, INC.)
34 Defendants.)

21 ORAL AND VIDEOTAPED DEPOSITION OF
22 KEITH FRIEDMAN
23 VOLUME 2

24 JANUARY 17, 2014

25 ORAL AND VIDEOTAPED DEPOSITION OF KEITH FRIEDMAN,

KEITH FRIEDMAN - 1/17/2014
VOLUME 2

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1 produced as a witness at the instance of the
2 Defendants, and duly sworn, was taken in the
3 above-styled and numbered cause on January 17, 2014,
4 from 9:52 a.m. to 10:03 p.m., before Donna Wright, CSR
5 in and for the State of Texas, reported by machine
6 shorthand, at the law offices of BOWMAN & BROOKE, 2901
7 Via Fortuna Drive, Suite 500, Austin, Texas, pursuant
8 to the Federal Rules of Civil Procedure and the
9 provisions stated on the record or attached hereto.

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25

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1 in the road, and this is -- is that when you say the
2 4Runner's fuel tank was breached?

3 A. Well, in that impact.

4 Q. Okay. Have you --

5 A. And you said fuel tank. I said fuel system.

6 Q. All right. Have you made any calculations as
7 to the level of force with which the rear of the
8 4Runner, including the fuel tank, was driven into the
9 ground during that initial impact with the Volvo?

10 A. Yes.

11 Q. And were those provided in your report?

12 A. No. They are in the simulations that we have
13 talked about.

14 Q. Simulations that we have never seen before?

15 MR. PITTMAN: Objection, form.

16 THE WITNESS: They are here, but whatever
17 it is --

18 Q. (BY MR. STONE) They are on CDs?

19 A. Yes.

20 Q. And could I run those on my computer if I
21 wanted to?

22 A. You could look at the videos.

23 Q. I assume I would have to have special software
24 to look at the data?

25 A. It depends on -- yes, I suppose.

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1 A. It's strong.

2 (Discussion off the record)

3 FURTHER EXAMINATION

4 BY MR. DAWSON:

5 Q. Mr. Friedman, first of all, thank you for the
6 endurance. We appreciate it. Even though we're on
7 other sides, people do appreciate that. I think I can
8 say that for everybody here.

9 A. Well, thank you.

10 Q. Very briefly, sir, would you say that even for
11 a trained engineer, the ability to look at a virtual
12 crash test with all of the back-up data is something
13 that takes days, if not weeks sometimes, to totally
14 understand it?

15 MR. PITTMAN: Objection, form.

16 THE WITNESS: I think that's an
17 interesting question.

18 Q. (BY MR. DAWSON) Would you agree, sir, that --

19 A. I guess that depends on their skill level, et
20 cetera.

21 Q. Absolutely. But, at a minimum, would you
22 agree, sir, that the complexity of the simulations that
23 your company has run on behalf of the plaintiffs in
24 this case, even for a very skilled engineer, would take
25 at least two, three, four days to go through and have

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1 an understanding of what it is you have done and what
2 it means?

3 MR. PITTMAN: Objection, form.

4 THE WITNESS: I guess that depends on
5 what the purpose was.

6 Q. (BY MR. DAWSON) Yes, sir. In other words, so
7 if I was trying to get an engineer to sit down with me
8 to go through your simulation so that I could prepare
9 to cross-examine you, could you envision that I could
10 ever do it unless I had at least three or four days of
11 an engineer's time?

12 MR. PITTMAN: Objection, form.

13 THE WITNESS: Well, I don't know. It
14 depends on you, I guess.

15 Q. (BY MR. DAWSON) Well, let's take it another
16 way. If I had retained you and we -- you and I wanted
17 to know what -- let's say, what was done with Mr. Carr
18 and his crash test, the Exponent, wouldn't you agree
19 it's going to take you at least one to two days at a
20 minimum just to understand what went on out there?

21 MR. PITTMAN: Objection, form.

22 THE WITNESS: Well, I think the normal
23 approach is that when -- explore what was done and you
24 asked questions to understand what was done and what
25 the implications are.

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1 Q. (BY MR. DAWSON) Yes, sir.

2 A. So that's what I think.

3 Q. And would you agree with me, sir, that at a
4 minimum, for someone like a lawyer to dig in 17 boxes
5 and look at a simulation, would be very difficult for
6 that lawyer to be able to craft questions on behalf of
7 his client without some technical help?

8 MR. PITTMAN: Objection, form.

9 THE WITNESS: I wouldn't -- I don't know.

10 Q. (BY MR. DAWSON) All right, sir.

11 A. That depends on the lawyer.

12 Q. Okay, very good. And can you tell me, sir,
13 when I had the opportunity to question you a while ago,
14 you said it would take you some time to find the
15 simulations that you said you did prior to November
16 of 2013. And so what I would like to know is, is there
17 a way that you can pull those things out so that I can
18 mark them as separate exhibits to send to my expert to
19 examine? Do you follow what I'm saying?

20 A. No.

21 Q. You are not following what I'm saying. I
22 apologize. It's late and I know you're tired. What
23 I'm saying is, would there be a way for you to, in just
24 a couple moments or a couple minutes, pull out of your
25 boxes all the simulations you did that involve issues

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1 Q. (BY MR. DAWSON) Yes, sir. The simulations --

2 A. Oh, okay.

3 Q. -- that you said you did for my client's
4 issue, sir, would you agree that I -- just on any of
5 these Dells or Apple computers, I could plug them in,
6 but I couldn't get a program on there right now that I
7 could read all the data, could I?

8 MR. PITTMAN: Objection, form.

9 THE WITNESS: I don't know.

10 Q. (BY MR. DAWSON) Well, you know it has to
11 have -- to have the simulation, I can't open it up
12 unless I've got a special program or a license
13 for the --

14 A. Well, you can look at videos. I mean, you
15 presumably have a movie player.

16 Q. Yes, sir, I can look at videos. But without
17 understanding the speeds, the angles, the deformation,
18 the stiffness coefficients, and all the other things
19 that go into it, I'm blinded from all those aspects of
20 it, am I not?

21 MR. PITTMAN: Objection, form.

22 THE WITNESS: If you don't ask, yes.

23 Q. (BY MR. DAWSON) When you say if I don't ask,
24 do you know how many times my partner, Ms. Clark, asked
25 Mr. Pittman to have you produce at least two days in

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1 MR. PITTMAN: They are already marked as
2 part of one exhibit.

3 MR. DAWSON: No, if someone can just
4 segregate them so that I can have them.

5 MR. PITTMAN: We're not going to separate
6 them, Don.

7 MR. DAWSON: Okay. Well, let's go back
8 on the record. I want this on the record.

9 THE VIDEOGRAPHER: We're on the record.

10 MR. DAWSON: Counsel for the plaintiff
11 has instructed the witness to not agree to segregate
12 the files of the simulations that none of us have had a
13 chance to see and has refused to allow it, even though
14 the witness says he can do it. And I just want the
15 record to be clear on that, and that will be a motion
16 issue.

17 MR. PITTMAN: I want the record to be
18 clear that Mr. Dawson is aware -- he was here on
19 Wednesday and all of these exhibits were marked as one
20 exhibit by Toyota's counsel. We are maintaining the
21 integrity of all of those exhibits. We're not
22 permitted to separate the exhibits that have been
23 marked, Don. You're aware of that. So the witness is
24 not --

25 MR. DAWSON: Well --

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1 IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
2 DALLAS DIVISION

3 OLLIE GREENE,)
Individually as the)
4 surviving parent of)
WYNDELL GREENE, SR.,)
5 WILLIAM GREENE, as the)
representative of the)
6 Estate of WYNDELL GREENE,)
SR., and MARILYN)
7 BURDETTE-HARDEMAN,)
Individually and as the)
8 surviving parent of)
LAKEYSHA GREENE,)
9 Plaintiffs,)

10 | VS.) CAUSE NO. 3-11CV-0207-N

11	TOYOTA MOTOR CORPORATION,)
	TOYOTA MOTOR)
12	MANUFACTURING NORTH)
	AMERICA, INC., AND TOYOTA)
13	MOTOR SALES USA, INC.,)
	VOLVO GROUP NORTH)
14	AMERICA, INC., VOLVO)
	TRUCKS NORTH AMERICA, A)
15	DIVISION OF VOLVO GROUP)
	NORTH AMERICA, INC.,)
16	STRICK CORPORATION, INC.,)
	JOHN FAYARD MOVING &)
17	WAREHOUSE, LLC and)
	DOLPHIN LINE, INC.)
18	Defendants.)

* * * * *

21 ORAL AND VIDEOTAPED DEPOSITION OF
22 R. RHOADS STEPHENSON
23 JANUARY 18, 2014

25 | ORAL AND VIDEOTAPED DEPOSITION OF R. RHOADS

R. RHOADS STEPHENSON - 1/18/2014

Page 2

1 STEPHENSON, produced as a witness at the instance of
2 the Defendants, and duly sworn, was taken in the
3 above-styled and numbered cause on January 18, 2014,
4 from 9:29 a.m. to 6:28 p.m., before Donna Wright, CSR
5 in and for the State of Texas, reported by machine
6 shorthand, at the law offices of BOWMAN & BROOKE,
7 2901 Via Fortuna Drive, Suite 500, Austin, Texas,
8 pursuant to the Federal Rules of Civil Procedure and
9 the provisions stated on the record or attached hereto.

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Kristin Geoffrion - Videographer
20
21
22
23
24
25

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1 Q. Did you take any photos of the vehicle?

2 A. No.

3 Q. Did you make any notes during your inspection?

4 A. I probably did maybe on the airplane going
5 home, yes.

6 Q. Are they part of the file of the 17 boxes
7 that's here today?

8 A. I don't think so. I don't -- I'm not -- I
9 don't know if they still exist.

10 Q. With regard to the file, the file is in paper
11 or hard form, and is kept here in Austin in
12 Mr. Friedman's office?

13 A. Correct, yes.

14 Q. Do you have your own copy of the file?

15 A. I have some of the documents that are in
16 the -- in the file -- fire boxes over here. I have
17 probably my personal copies of all of those.

18 Q. And are those still at your home office in
19 California, your copies of them?

20 MR. PITTMAN: Objection, form.

21 THE WITNESS: Yeah, I think I probably
22 have a stack that high (indicating).

23 Q. (BY MR. STONE) You have a stack, I think you
24 were showing, about a foot and a half tall --

25 A. Something like that.